IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6025 OF 2005

Devkant Singh ..Petitioner.

Vs.

Union of India & Ors. ..Respondents.

...

Mr.P.L.Naik for the Petitioner.

Mr.B.A.Desai, Additional Solicitor General with

Mr.C.S.Kapadia for Respondent Nos.1 to 4.

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CORAM : F.I.REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

20th October, 2005.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioner approached this Court to impugn the order of discharge dated 24th December, 2004 under Rule 15(2)g(ii) of the Air Force Rules,

1969. The Respondents have filed their reply. The Rule earlier adverted to has been set out. In terms of the said Rule, a person can be discharged as habitual offender if the total number of punishment entries are six and above (including red ink and black ink). In the affidavit of Mr.P.N. Pradhan, Group Captain, Station Commander, Air Force Station, Thane, in paragraph 2 it is set out that the Petitioner had four red entries and two black entries. In other words, the Petitioner would fall within the 'Habitual Offenders Policy'. The issue of discharge of a habitual offender was an issue before the Apex Court in case of **Union of India v. Corporal A.K. Bakshi** (1996) 3 SCC 65. The Apex Court after considering the Rules has taken a view that an order passed under the Rules does not amount to punitive removal. It was sought to be contended on behalf of the Petitioner by referring to paragraph 26 of the affidavit of the Respondents herein that the discharge is by way of a punishment. The earlier entry which was made may have been made based on the misconduct. The present act of discharge, however, is based on the Rule which describes who is a

habitual offender. Once that be the case, it will not be possible for us to interfere in the exercise of the extra-ordinary jurisdiction.

3. Another grievance that Mr.Naik has is that the Petitioner has been denied the normal benefit which an ex-service man is entitled to on being discharged. If the Petitioner is entitled in law to any benefit on discharge, the Respondents to permit him to enjoy those benefits. With the above observations, rule discharged. There shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)